IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 610 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN UMAKANT PRAJAPATI

Versus

GAGAJIBHAI KHODABHAI PATEL

Appearance:

MR DHIRENDRA MEHTA for Petitioners No. 1-4

RULE SERVED for Respondents No. 1-2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 16/10/2001

ORAL JUDGEMENT

1. The petitioners are the plaintiffs in Regular Civil Suit No.1386 of 1992 in the Court of Civil Judge (S.D.), Surat. They have filed the said suit for declaration and injunction to restrain the respondents

from encroaching on the suit property which, according to them, was in their possession. They also prayed for temporary injunction in the same terms. Ex-parte ad-interim injunction was granted on 3rd December, 1992 and notice was made returnable on 14th December, 1992. Thereafter, the said injunction was extended from time to time.

2. However, the learned 2nd Joint Civil Judge (S.D.), Surat, by his judgment and order dated 1st December, 1997 dismissed the application and vacated the ex-parte ad-interim injunction.

3. The plaintiffs filed an appeal in the District Court, Surat on 4th December, 1999. Since there was a delay of 1 year, 9 months and 25 days, they also made an application for condonation of delay [Miscellaneous Civil (Delay) Application No.120 of 1999]. The learned Assistant Judge, Surat has, however, dismissed the said application by his judgment and order dated 29th October, 2000, after hearing both the parties.

4. The petitioners have, therefore, filed this revision application under Section 115 of the Civil Procedure Code against the said orders refusing temporary injunction.

5. Initially, show-cause notice as regards admission and interim relief was made returnable on 18th July, 2001 but the respondents did not enter appearance, though served. Thereafter, on 30th August, 2001, rule was issued which was made returnable today. However, the respondents have not entered appearance.

6. It was stated in the application for condonation of delay that the ex-parte injunction had continued in their favour from 1992 to 1996 and the petitioners, being women, were under the impression that they will have to go to the court when the suit comes to trial and they were under the bonafide impression that the injunction would continue till the final judgment. However, when they came to know that the defendants were trying to snatch possession, they filed a police complaint on 20th July, 1999 and when they inquired from their advocate, they came to know that the suit had been adjourned to 27th December, 1999. They met the advocate at his office on 28th November, 1999 who told them that he had written letters to them but, in fact, the petitioners had not received any letter. Thereafter, they had filed the present appeal on 4th December, 1999.

7. It appears that the petitioners' advocate also filed an affidavit stating that he had written several postcards but he did not know whether the petitioners had received the same or not. The learned Judge, however, did not believe the petitioners when they stated that they have not received any letter from their advocate. He also referred to the conduct of the petitioners in filing the criminal complaint and observed that the petitioners must have consulted their advocate before filing the complaint. However, the fact remains that the petitioners had obtained ex-parte injunction which had continued for a period of four years and if they had been aware of the fact that the injunction had been vacated, there was no reason for them not to file an appeal. In the circumstances, the petitioners' case that they had not received any letters from their advocate cannot be disbelieved. It is well-settled that the expression `sufficient cause' is to be construed liberally and in the circumstances of the case, there is no reason to deny the petitioners an opportunity of hearing of the appeal on merits. In my opinion, it cannot be said that the explanation offered by the petitioners was not bonafide. The revision application is, therefore, allowed. The impugned order is set aside and the Miscellaneous Civil Application No.120 of 1999 is allowed. Rule made absolute accordingly.

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